PART IV

SECTION—1 B

CENTRAL ACTS AND ORDINANCES

LAW AND PARLIAMENTARY AFFAIRS SECRETARIAT

Notification No. LAW 85 LCA 75.

Bangalore, dated 20th October 1975.

Ordered that the Payment of Bonus (Amendment) Ordinance, 1975 (No. 11 of 1975), published in Part II, Section I of the Gazette of India, Extraordinary, dated 25th September 1975, be repulished in the *Karnataka Gazette* for general information.

By Order and in the name of the Governor of Karnataka,

B. NAGESHA RAO,
Under Secretary to Government,
41 *Department of Law and Parliamentary Affairs.*

THE PAYMENT OF BONUS (AMENDMENT) ORDINANCE, 1975

No. 11 OF 1975

Promulgated by the President in the Twenty-sixth Year of the Republic of India.

An Ordinance further to amend the Payment of Bonus Act, 1965.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. Short title and commencement.—(1) This Ordinance may be called the Payment of Bonus (Amendment) Ordinance, 1975.

(2) It shall come into force at once.

2. Act 21 of 1965 and Act 43 of 1961 to be temporarily amended.—During the period of operation of this Ordinance, the Payment of Bonus Act, 1965 (hereinafter referred to as the principal Act) shall have effect subject to the amendments specified in sections 3 to 29 (both inclusive) and the Income-tax Act, 1961 shall have effect subject to the amendment specified in section 30.

3. Amendment of long title.—For the long title to the principal Act, the following long title shall be substituted, namely:

"An Act to provide for the payment of bonus to persons employed in certain establishments on the basis of profits or on the basis of production or productivity and for matters connected therewith".

4. Amendment of section 1.—In section 1 of the principal Act,—

(a) to sub-section (3), the following proviso shall be added, namely:—

"Provided that the appropriate Government may, after giving not less than two months' notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act with effect from such accounting year as may be specified in the notification, to any

establishment or class of establishments [including an establishment being a factory within the meaning of sub-clause (ii) of clause (m of section 2 of the Factories Act, 1948] (63 of 1948) employing such number of persons less than twenty as may be specified in the notification, so, however, that the number of persons so specified shall in no case be less than ten.";

(b) in sub-section (4), after the existing proviso, the following proviso shall be inserted, namely :—

"Provided further that when the provisions of this Act have been made applicable to any establishment or class of establishments by the issue of a notification under the proviso to sub-section (3), the reference to the accounting year commencing on any day in the year 1964 and every subsequent accounting year or, as the case may be, the reference to the accounting year commencing on any day in the year 1968 and every subsequent accounting year, shall, in relation to such establishment or class of establishments, be construed as a reference to the accounting year specified in such notification and every subsequent accounting year.";

(c) in sub-section (5),—

(i) the words, brackets, letter and figure "under clause (b) of sub-section (3)" shall be omitted ;

(ii) the words, brackets and figure "or, as the case may be, the number specified in the notification issued under the proviso to sub-section (3)" shall be added at the end.

5. **Amendment of section 2.**—In section 2 of the principal Act,—

(a) in clause (4),—

(i) in sub-clause (a), the brackets and words "(other than a banking company)" shall be omitted ;

(ii) the words, brackets and figures "and includes any amount treated as such under sub-section (2) of section 34" shall be omitted ;

(*b*) in clause (8), after the words, brackets and figures (any subsidiary bank as defined in the State Bank of India Subsidiary Banks) Act, 1959," (38 of 1959) the words, brackets, figures and letter "any corresponding new bank specified in the First Schedule to the Banking Companies (Acquisition and Transfer of undertakings) Act, 1970, (5 of 1970) any co operative bank as defined in clause (b) (ii) of section 2 of the Reserve bank of India Act, 1934," (2 of 1934) shall be inserted.

6. Substitution of new section for section 4.—For section 4 of the principal Act, the following section shall be substituted, namely:—

"**4. Computation of gross profits.**—The gross profits derived by an employer from an establishment in respect of any accounting year shall be calculated in the manner specified in the First Schedule.".

7. Amendment of section 6.—In section 6 of the principal Act, in clause (d), for the words "Third Schedule" the words "Second Schedule" shall be substituted.

8. Substitution of new section for section 10.—For section 10 of the principal Act, the following section shall be substituted, namely:—

"**10. Amount of bonus.**—(1) Subject to the other provisions of this Act, where an employer has any allocable surplus in any accounting year, then he shall be bound to pay to every employee in respect of that accounting year a minimum bonus which shall not be less than four per cent of the salary or wage earned by the employee during the accounting year or one hundred rupees whichever is higher, or in a case where the allocable surplus exceeds the said amount of minimum bonus payable to the employees, an amount in proportion to the salary or wage earned by the employee during the accounting year subject to a maximum of twenty per cent. of such salary or wage :

Provided that where an employee has not completed fteen years of age at the beginning of that accounting

year, the provisions of this sub-section shall have effect in relation to such employee as if for the words "one hundred rupees", the word "sixty rupees" were substituted.;

(2) For the purposes of sub-section (1), the allocable surplus shall be computed taking into account the amount set on or set off in the three immediately preceeding accounting years and in the accounting year in respect of which the bonus is payable, in the manner illustrated in the Third Schedule.

(3) Not withstanding anything contained in this section, every employer shall be bound to pay to every employee in respect of the accounting year commencing on any day in the year 1974, a minimum bonus which shall be four per cent. of the salary or wage earned by the employee during that accounting year or one hundred rupees whichever is higher, whether or not the employer has any allocable surplus in that accounting year :

Provided that where an employee has not completed fifteen years of age at the begining of that accounting year, the provisions of this sub-section shall have effect in relation to such employee as if for the words "one hundred rupees", the words "sixty rupees" were substituted:

Provided further that where any employer has, before the commencement of the Payment of Bonus (Amendment) Ordinance, 1975, paid to his employees in respect the accounting year commencing on any day in the year 1974, a minimum bonus in excess of that specified in this sub-section, notwithstanding that such employer did not have the required allocable surplus for the payment of such bonus, then, such employer shall deduct the excess amount of bonus so paid from the amount of bonus payable by him to the emplyees under this Act in respect of the three immediately succeeding accounting years and the employees shall be entitled to receive only the balance."

9. Ommission of section 11.—Section 11 of the principal Act shall be omitted.

10. Amendment of section 12.—In section 12 of the principal Act, the words and figures "or, as the case may be, under section 11," shall be omitted.

11. Substitution of new section for section 13.—For section 13 of the principal Act, the following section shall be substituted, namely :—

"13. **Proportionate deduction in bonus in certain cases.**—Where an employee has not worked for all the working days in any accounting year, the bonus payable to him under section 10 shall be proportionately reduced."

12. Substitution of new section for section 15.—For section 15 of the principal Act, the following section shall be substituted, namely :—

"**15. Set on and set off of allocable surplus.**—(1) Where for any accounting year the allocable surplus exceeds the amount of bonus payable to the employees in the establishment under section 10, then, the excess shall, subject to a limit of twenty per cent. of the total salary or wage of the employees employed in the establishment in that accounting year, be carried forward for being set on in the succeeding accounting year and so on, to be utilised for the purpose of payment of bonus, in the manner illustrated in the Third Schedule.

(2) Where for any accounting year, there is no allocable surplus or the allocable surplus in respect of that year falls short of the amount of bonus payable to the employees in the establishment under section 10, and there is no sufficient amount carried forward and set on under sub-section (1) which could be utilised for the purpose of payment of bonus, then, so much amount as is necessary for the payment of bonus, under this Act shall be carried forward for being set off in the succeeding accounting year and so on in the manner illustrated in the Third Schedule.

(3) The principle of set on and set off as illustrated in the Third Schedule shall apply to all other cases not

covered by sub-section (1) or sub-section (2) for the purpose of payment of bonus under this Act.'

13. Amendment of Section 16:—In section 16 of the principal Act,—

(*a*) for sub-section (1) and the *Explanations* thereto, the following sub-sections and *Explanations* shall be substituted, namely:—

"(*1*) Where an establishment is newly set up, whether before or after the commencement of this Act, the employees of such establishment shall be entitled to be paid bonus under this Act in accordance with the provisions of sub-sections (*1A*), (*1B*) and (*1C*).

(*1A*) In the first five accounting years following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be, from such establishment, bonus shall be payable only in respect of the accounting year in which the empolyer derives profit from such establishment and such bonus shall be calculated in accordance with the provisions of this Act in relation to that year but without applying the provisions of section 15.

(*1B*) For the sixth and seventh accounting years following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be, from such establishement, the provisions of section 15 shall apply subject to the following modifications, namely:—

(i) for the sixth accounting year—

set on or set off, as the case may be, shall be made in the manner illustrated in the Third Schedule taking into account the excess or deficiency if any, as the case may be, of the allocable surplus set on or set off in respect of the fifth and sixth accounting years;

(ii) for the seventh accounting year—

set on or set off, as the case may be, shall be made in the manner illustrated in the Third Schedule taking into account the excess or deficienoy, if any, as the ease may be, of the allocable surplus set on or set off in respect of the fifth, sixth and seventh accounting years.

(*1C*) From the eighth accounting year following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be, from such establishment, the provisions of section 15 shall apply in relation to such establishment as they apply in relation to any other establishment.

Explanation I.—For the purpose of sub-scction (*1*), an establishment shall not be deemed to be newly set up merely by reason of a change in its location, management, name or ownership.

Explanation II.—For the purpose of sub-section (*1A*), an employer shal' not be deemed to have derived profit in any accounting year unless—

(*a*) he has made provision for that year's depreciation to which he is entitled under the Income-tax Act or, as the case may be, under the agricultural Income-tax law; and

(*b*) the arrears of such depreciation and losses incurred by him in respect of the establishment for the previous accounting years have been fully set off against his profits.

Explanation III.—For the purposes of sub-sections (*1A*), (*1B*) and (*1C*), sale of the goods produced or manufactured during the course of the trial running of any factory or of the prospecting stage of any mine or any oil field shall not be taken into consideration and where any

question arises with regard to such production or manufacture, the decision of the appropriate Government made after giving the parties a reasonable opportunity of representing the case, shall be final and shall not be called in question by any court or other authority.";

(b) in sub-section (2), for the word, brackets and figure "sub-section (*1A*)", the words, brackets, figures and letters "sub-sections (1), (*1A*), (*1B*) and (*1C*)" shall be substituted.

14. Amendment of section 19:—In section 19 of the principal Act,—

(*a*) in sub-section (1), for the brackets, figure and words "(1) Subject to the provisions of this section, all amounts", the words "All amounts" shall be substituted;

(b) sub-sections (2) to (7) shall be omitted.

15. Amendment of section 20:—In section 20 of the principal Act,—

(*a*) in sub-section (1), the brackets and figure "(1)" shall be omitted;

(*b*) sub-section (2) shall be omitted.

16. Amendment of section 21.—In section 21 of the principal Act, in the *Explanation*, the figures "24" shall be omitted.

17. Amendment of section 23.—In section 23 of the principal Act, in sub-section (1), for the words and figures "and in sections 24 and 25", the words and figures "and in section 25" shall be substituted.

18. Omission of section 24.—Section 24 of the principal Act shall be omitted.

19. Amendment of Section 27.—In Section 27 of the principal Act, sub-section (5) shall be omitted.

20. Insertion of new section 31 A.—After section 31 of the principal Act. the following section shall be inserted namely :—

"**31 A. Special provision with respect to certain employees for payment of bonus.**—Notwithstanding anything contained in this Act, where an agreement or a settlement has been entered into by the employees with their employer before the commencement of the Payment of Bonus (Amendment) Ordinance, 1975 or, where the employees enter into any agreement or settlement with their employer after such commencement for payment of an annual bonus linked with production or productivity in lieu of bonus based on profits payable under this Act, then, such employees shall be entitled to receive bonus due to them under such agreement or settlement, as the case may be:

Provided that such employees shall not be entitled to be paid such bonus in excess of twenty per cent. of the salary or wage earned by them during the relevant accounting year.".

21. Amendment of section 32.—In section 32 of the principal Act,—

(a) for clause (vii), the following clause shall be substituted, namely :—

"(vii) employees employed by a banking company ;";

(b) in clause (ix),—

(i) after sub-clause (f), the following sub clause shall be inserted, namely :—

"(ff) the Industrial Reconstruction Corporation of India ;";

(ii) in sub-clause (g), the brackets and words "(other than a banking company)" shall be omitted;

(c) clause (x) shall be omitted.

22. Omission of Section 33.—Section 33 of the principal Act, shall be omitted.

23. Substitution of new section for section 34.—For section 34 of the principal Act, the following section shall be substituted, namely :—

"34. **Effect of laws and agreements inconsistent with the Act.**—Subject to the provisions of section 31A, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in the terms of any award, agreement, settlement or contrat of service.".

24. Omission of section 37.—Section 37 of the principal Act shall be omitted.

25. Amendment of section 38.—In section 38 of the principal Act, in sub-section (3),—

(*a*) for the words "or in two successive sessions", the words "or in two or more successive sessions" shall be substituted;

(*b*) for the words "in which it is so laid or the session immediately following", the words "immediately following the session or the successive sessions aforsaid" shall be substituted.

26. Omission of the First Schedule.—The First Schedule to the principal Act shall be omitted.

27. Amendment of the Second Schedule.—In the Second Schedule to the principal Act,—

(*a*) for the heading "THE SECOND SCHEDULE", the heading "THE FIRST SCHEDULE" shall be substituted;

(*b*) for the sub-heading "[*See* section 4(b)]", the sub-heading "(*See* section 4)" shall be substituted;

(*c*) in Item 3, after sub-item (*a*), the following sub-item shall be inserted, namely:—

"(*aa*) The amount debited in respect of gratuity paid or payable to employees in excess of the aggregate of—

(*i*) the amount, if any, paid to, or provided for payment to, an approved gratuity fund; and

(*ii*) the amount actually paid to employees on their retirement or on termination of their employment for any reason.";

(*d*) in Item 6, for sub-item (*g*), the following sub-item shall be substituted, namely: —

"(*g*) Cash subsidy, if any, given by the Government or by any body corporate established by any law for the time being in force or by any other agency through budgetary grants, whether given directly or through any agency for specified purposes and the proceeds of which are reserved for such purposes.";

(*e*) before the foot-notes, the following *Explanation* shall be inserted, namely.—

'*Explanation*.—In sub-item (*aa*) of Item 3, "approved gratuity fund" has the same meaning assigned to it in clause (5) of section 2 of the Income-tax Act'.

28. **Amendment of the Third Schedule**.—In the Third Schedule to the principal Act.,—

(*a*) for the heading "THE THIRD SCHEDULE", the heading "THE SECOND SCHEDULE" shall be substituted;

(b) in Item 1, in column (2), the words, "other than a banking company" shall be omitted;

(*c*) Item 2 and the entries relating thereto shall be omitted;

(*d*) in the *Explanation*, the figures and brackets, "2 (*iii*)" shall be omitted.

29. Substitution of new Schedule for the Fourth Schedule :—For the Fourth Schedule to the principal Act, the following Schedule shall be substituted, namely :—

THE THIRD SCHEDULE

(*See* sections 10, 15 and 16)

The illustration in this Schedule has been worked out with reference to an establishment which has an annual salary or wage bill of rupees one lakh, twenty per cent, of which amounts to Rs. 20,000 and four per cent. of which amounts to Rs. 4,000.

Year	Amount equal to sixty per cent. or sixty-seven per cent as the case may be, of available surplus allocable as bonus	'Set on' or 'set off' of the preceding year	Amount paid or payable as bonus	Balance of 'set on' or 'set off'
(1)	(2)	(3)	(4)	(5)
	(Rs.)	(Rs.)	(Rs.)	(Rs.)
1	42,000	+3,000(a)	20,000	+20,000 (b)
2	Nil	+20,000	20,000	Nil
3	10,000	Nil	10,000	Nil
4	10	Nil	4,000	—3,990
5	100	—3,990	4,000	—7,890
6	Nil	—7,890	Nil	—7,890
7	27,890	—7,890	20,000	Nil
8	Nil	Nil	Nil	Nil
9	25,000	Nil	20,000	+5,000
10	15,100	+5,000	20,000	+100
11	Nil	+100	4,000	—3,900

NOTES :—1. The notation "+" denotes 'set on' and the notation "—" denotes 'set off'.

2. "(a)" represents the amount 'set on' as calculated under the provisions of this Act as it stood immediately before the commencement of the Payment of Bonus (Amendment) Ordinance, 1975.

"(b" represents the maximum amount to be 'set on' under section 15.'.

30. Amendment of section 36 of the Income-tax Act.– In sub-section (1) of section 36 of the Income-tax Act, 1961 (43 of 1961,) in the proviso to clause (*iv*), for the words "Provided that the amount of the bonus or commission", the words "Provided further that the amount of the bonus (not being bonus referred to in the first proviso) or commission" shall be substituted and before that proviso as so amended, the following proviso shall be inserted, namely :—

"Provided that the deduction in respect of bonus paid to an employee employed in a factory or other establishment to which the provisions of the Payment of Bonus Act, 1965, (21 of 1965) apply shall not exceed the amount of bonus payable under that Act.'.

31. **Saving** :—For the removal of doubts, it is hereby declared that notwithstanding the amendments made to the principal Act by this Ordinance, the provisions of the principal Act as they stood from time to time before the commencement of this Ordinance shall apply and continue to apply to and in relation to the payment of bonus in respect of any accounting year preceding the accounting year commencing on any day in the year 1974.

FAKHRUDDIN ALI AHMED,
President.

K. K. SUNDARAM,
Secy. to the Govt. of India.